

79974-1

No. 57935-5-I

IN THE COURT OF APPEALS DIVISION ONE  
OF THE STATE OF WASHINGTON

2006 MAY 23 PM 3:27  
RECEIVED  
COURT OF APPEALS  
DIVISION ONE  
CLERK'S OFFICE

CITY OF SEATTLE,

Plaintiff/Respondent,

v.

MARK LUDVIGSEN,

Defendant/Petitioner.

THE CITY'S REPLY TO PETITION  
FOR DISCRETIONARY REVIEW

Moses F. Garcia  
WSBA No. 24322  
Attorney for City of Seattle  
700 Fifth Avenue, Suite 5350  
P.O. Box 94667  
Seattle, WA 98124-4667  
(206) 684-7732

**CERTIFICATE OF MAILING**

I certify under penalty of perjury under the laws of the State of Washington  
that on 5/8/2006 I mailed a true copy of the document to which  
this certifies Elizabeth Pedraza for Mark Ludvigsen  
at Bellevue, WA. (425) 453-0528  
Signed 5/8/2006 at Seattle, Washington.

ORNEY

Assistant City Attorney  
WSBA # 24322

**A. IDENTITY OF RESPONDENT**

The City of Seattle is the Respondent and prosecuted Ludvigsen for DUI in the Seattle Municipal Court.

**B. DECISION BELOW**

The Municipal Court concluded Ludvigsen's case should be decided according to the procedural rules governing breath tests on the date of his arrest. The municipal court judge concluded that, under the procedures in effect on the date of the arrest, the City could not establish foundation for the breath test. The court suppressed the breath test and dismissed the prosecution.

Upon RALJ review, the Superior Court reversed, concluding that a trial court relies upon the procedural rules in effect on the date of the hearing, and not those in effect on the date of the violation.

**C. ISSUE PRESENTED FOR REVIEW**

Does a trial court apply the rules governing admission of breath tests in effect on the date of the arrest or those in effect on the date of the hearing to determine admissibility?

**D. STATEMENT OF THE CASE**

Mark Ludvigsen ("Ludvigsen") was arrested for DUI on February 5, 2002. Ludvigsen failed to appear at his arraignment and was arrested on the warrant almost three years later.

On motion by Ludvigsen, the trial court suppressed the breath test result and dismissed the breath test. The court concluded that the law in effect on the date of the arrest governed the admission of the breath test.

The superior court disagreed, concluding that the law in effect on

the date of the admissibility hearing governs the procedures for admission of a breath test.

Ludvigsen's petition for discretionary review follows.

**B. ARGUMENT**

1. The petition meets the requirements of RAP 2.3(d)(3) and review should be granted.

Under RAP 2.3(d)(3), review should be granted when the case presents a decision involving an issue of public interest.

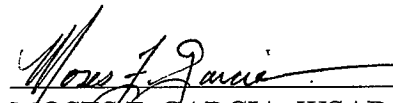
The procedures governing admission of alcohol tests are a matter of public interest and considerable debate. The City of Seattle has other cases on warrant status, which are affected by the ruling by the trial court in this matter. Because the trial courts are inconsistent in resolving this issue, review and an authoritative opinion on the issue is warranted.

**C. RELIEF REQUESTED**

The City agrees discretionary review of this petition is appropriate in this case and should be granted.

DATED THIS 8th day of May, 2006.

Respectfully submitted,

  
\_\_\_\_\_  
MOSES F. GARCIA, WSAB #24322  
Assistant City Attorney